

LAW REVIEW 1111

DOJ Settles USERRA Suit Against Titan Laboratories

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1.3.2.1—Prompt Reinstatement

1.4—USERRA Enforcement

On January 18, 2011, the Department of Justice (DOJ) announced that it had settled the USERRA lawsuit that it had filed in the United States District Court for the Northern District of California against Titan Laboratories, Inc. and its owner on behalf of Army Reservist Miguel Orozco Orduno (Orozco). Under the settlement agreement, Orozco will receive \$21,000 in back pay.

Orozco left his Titan Laboratories job when he was called to active duty. While he was away, Titan hired a “permanent replacement.” Orozco returned from active duty and met the eligibility criteria for reemployment under the Uniformed Services Employment and Reemployment Rights Act (USERRA), but Titan denied him reemployment.

Orozco complained to the Veterans’ Employment and Training Service of the United States Department of Labor (DOL-VETS), which conducted an investigation and found Orozco’s complaint to be meritorious. After trying unsuccessfully to persuade Titan to comply with USERRA, DOL-VETS referred the case to DOJ and recommended that DOJ file suit on behalf of Orozco, which DOJ did. The case has now been resolved.

Because Orozco met the USERRA criteria regarding prior notice, the five-year limit, release under honorable conditions, and timely application for reemployment, he was entitled to prompt reinstatement, even if that means displacing the replacement. Please see Law Review 0829, available at www.roa.org/law_review. You will find more than 800 articles there, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. Because Titan violated Orozco’s USERRA rights, the company was required to compensate him for the pay he lost because of the violation.

The Honorable Thomas E. Perez (the Assistant Attorney General for DOJ’s Civil Rights Division) said: “The men and women who serve in the military must be able to do so without fear that they will lose their civilian jobs as a result of their service. This case demonstrates the Justice Department’s commitment to vigorously enforcing federal laws that protect the employment rights of our service members.”

The Honorable Ray Jefferson (Assistant Secretary of Labor for Veterans’ Employment and Training) said: “We applaud the Justice Department not only for helping Mr. Orozco bring his case to a successful conclusion, but also for its outstanding efforts on behalf of our country’s service members.”

If you believe that your USERRA rights have been violated, you can make a formal complaint to DOL-VETS, through the agency’s website, www.dol.gov/vets. DOL-VETS will investigate your case and, upon your request, refer the case to DOJ, if DOL-VETS does not resolve the case. If DOJ is satisfied that you are entitled to the USERRA benefits that you seek, it may file suit on your behalf and represent you in suing the employer, at no cost to

you. DOL-VETS refers the case to DOJ if the employer is a state or local government or private employer. If the employer is a federal agency, DOL-VETS refers the case to the Office of Special Counsel (OSC).

If DOJ turns you down, or if you do not request referral to DOJ, you can file suit through private counsel, and if you prevail the court can award you attorney fees, in addition to back pay and other relief. You do not need to go through DOL-VETS before filing suit in federal court, but if you want free legal help from DOJ or OSC you must go through DOL-VETS.

Cases against state and local governments and private employers are filed in Federal District Court, either by DOJ or by private counsel. Cases against federal agencies are filed in the Merit Systems Protection Board (MSPB), either by OSC or by private counsel. The MSPB can also award attorney fees to a prevailing USERRA claimant who was represented by private counsel.